BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

In the Matter of	)	
	)	
Enabling Next-Generation Terrestrial	)	WT Docket No. 24-240
Positioning, Navigation, and Timing and 5G	)	RM-11989
A Plan for the Lower 900 MHz Band	)	
(902-928 MHz)	)	

COMMENTS OF PCS PARTNERS, L.P.

September 5, 2024

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SUMMARY

PCS Partners, L.P. strongly agrees with the underlying rationale of the NextNav Petition for Rulemaking: that the Commission's rules for M-LMS operations in the 900 MHz band, adopted 30 years ago, are outdated and have not resulted in any significant use of the spectrum. The record in numerous proceedings affecting M-LMS licensees has made this reality plain for many years, yet the rules have remained unchanged.

PCSP also strongly supports efforts to implement positioning, navigation, and timing technologies that complement GPS. The national need for and benefits of alternatives to GPS are clear, and licensed M-LMS spectrum may offer a viable and much-needed terrestrial alternative to GPS. PCSP generally supports certain aspects of the Petition, including reinstatement of terminated licenses, flexible use of M-LMS Bands spectrum, elimination of the M-LMS license cross-ownership prohibition, and application of the Commission's secondary market policies. However, before adopting a Notice of Proposed Rulemaking proposing specific changes to the M-LMS Bands rules, the Commission first must act on relevant pending matters and reinstate PCSP's terminated M-LMS licenses.

The relief requested in the Petition and the associated Assignment and Waiver Application filed by NextNav's affiliate Progeny LMS, LLC would effectively predetermine the outcome of numerous long-pending proceedings and unlawfully prioritize resolution of pending proceedings involving Progeny over similarly situated parties, including PCSP. However, neither the Assignment and Waiver Application nor the Petition provide any justification for such preferential treatment. Prompt action on all relevant pending matters ultimately will serve the public interest by bringing greater clarity to the future of the M-LMS Bands spectrum, including questions raised in the Public Notice.

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COMMENTS OF PCS PARTNERS, L.P.

PCS Partners, L.P. ("PCSP"), by its attorneys and pursuant to the Public Notice[1] released August 6, 2024, respectfully submits these comments on the above-captioned Petition for Rulemaking ("Petition") and the supplement thereto proposing specific revisions to Part 90 of the Commission's rules ("Rules Supplement")[2] filed by NextNav Inc. ("NextNav").

I. CHANGES TO THE M-LMS BANDS RULES ARE LONG OVERDUE

According to NextNav, "[t]he Lower 900 MHz band is underutilized due to outdated service and technical rules."[3] While other commenters will address utilization of the 12 MHz of spectrum in the 902-928 MHz band that is not allocated for the Location and Monitoring Service ("LMS"), PCSP agrees that the LMS segments of the "Lower 900 MHz band" have a long history of underutilization. It has been ten years since the Commission determined that changes to the M-LMS rules were not needed "at this time."[4] Rule changes are long overdue.

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[1] Public Notice, Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on NextNav Petition for Rulemaking, DA 24-776 (Aug. 6, 2024).

[2] Letter from Robert Lantz, General Counsel, NextNav Inc., to Marlene H. Dortch, Secretary, FCC (filed June 7, 2024).

[3] Petition at 17.

[4] *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Dkt. 06-49, Order, 29 FCC Rcd 6361, ¶ 7 (2014).

A. Background

The Commission established the LMS in 1995, adopting rules for two types of LMS systems, multilateration LMS ("M-LMS") and non-multilateration LMS.[5] M-LMS is defined as "a system that is designed to locate vehicles or other objects by measuring the difference of time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points or from a number of fixed points to the unit to be located."[6]

M-LMS spectrum comprises a total of 14 MHz within the 902-928 MHz band, which is "shared by a variety of users under a hierarchy of spectrum usage rights."[7] The M-LMS rules were intended to "promote certainty for all users of the band so they can invest in the equipment and facilities necessary to bring quality, low cost services to consumers" and to allow "efficient and competitive use" of dedicated spectrum.[8]

In 1998, the Commission adopted construction requirements for geographic area M-LMS licenses.[9] The rules require M-LMS Economic Area ("EA") licensees to "construct and place in operation a sufficient number of base stations that utilize multilateration technology ... to provide multilateration location service to one-third of the EA's population within five years of initial license grant, and two-thirds of the population within ten years," or, alternatively, to "provide substantial service to their licensed area within the appropriate five- and ten-year benchmarks."[10]

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[5] *See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695 (1995) ("*M-LMS R&O*").

[6] 47 C.F.R. § 90.7.

[7] *Progeny LMS, LLC*, Order, 38 FCC Rcd 2342, ¶ 2 (WTB 2023). *See also M-LMS R&O* at ¶ 29; 47 C.F.R. §§ 2.106 footnotes US 267, US 275, 5.150, US 1118.11(c); 18.301; 90.353(a),(d); 90.361; 97.301.

[8] *M-LMS R&O* at ¶¶ 1, 2.

[9] *Id*.

[10] 47 C.F.R. § 90.155(d). The Commission added the alternative "substantial service" construction showing in 2004. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078 (2004), Appendix A.

The Commission auctioned M-LMS EA licenses in 1999 (Auction 21) and 2001 (Auction 39). The auctioned M-LMS spectrum is divided into three blocks within each EA: A Block (6 MHz total; 904.00-909.75 MHz, paired with 927.75-928.00 MHz); B Block (2.25 MHz total; 919.75-921.75 MHz, paired with 927.50-927.75 MHz), and C Block (5.75 MHz total; 921.75-927.25 MHz paired with 927.25-925.50 MHz) (collectively, the "M-LMS Bands").[11] The rules prohibit a single M-LMS licensee from holding both the A Block and C Block licenses in the same EA.[12]

NextNav's affiliate Progeny LMS, LLC ("Progeny") acquired its M-LMS licenses at auction. PCSP was the high bidder at Auction 39 for, and was subsequently granted, 31 A Block licenses and one C Block license; several other entities also acquired M-LMS licenses at auction.

B. History of Underutilization of the M-LMS Bands

The lengthy history of underutilization of the M-LMS Bands is due to a variety of reasons, including changes in location position technology; the unique constraints of the M-LMS Bands rules; uncertainty created by Commission decisions regarding the M-LMS Bands; and the lack of commercially available equipment for the M-LMS Bands. Currently – 30 years after the Commission established M-LMS – no entity is using the M-LMS Bands to provide a service within the restrictions of the M-LMS rules.

Location Technology Developments. Since adoption of the M-LMS Bands rules, there have been substantial developments in the evolution of competing location technologies. Mandates in the U.S. and around the world compelled mobile services providers to implement location-based technologies to provide access to critical emergency services.[13] Equipment manufacturers and carriers understandably focused on market-driven location and positioning solutions, realizing economies of scope and scale. Carriers generally meet their obligations by relying on standardized techniques that use the concept of measuring the time difference of arrival of transmission from or to a fixed number of stations at known locations, to or from a device to be located.[14] These technologies have been standardized by the Third Generation Partnership Project ("3GPP").[15] The most successful location based technologies, such as Global Positioning System ("GPS") (owned by the U.S. Government) and Global Navigation Satellite Systems ("GNSS"), are widely available to wireless consumers as an integral part of service providers' bundled offerings.

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[11] 47 C.F.R. § 90.357(a).
[12] 47 C.F.R. § 90.353(f).

In contrast, there never has been equipment developed and sold commercially for a stand-alone position location service as contemplated by the Commission when it established M-LMS and auctioned M-LMS licenses. Instead, manufacturers and carriers alike have opted to pursue solutions that are based on open standards and that enable multiple services, which can deliver services to consumers more cost effectively.

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[13] *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996).

[14] See Alan Bensky, Wireless Positioning Technologies and Applications (2nd ed. 2016); Nat Natarajan and Ken Zdunek, E911 Indoor Location Technology Assessment, Jan. 21, 2015, available at http://apps.fcc.gov/ecfs/document/view?id=60001015543. In practical commercial deployments, a variety of technologies based on both multilateration and non-multilateration principles are used and results are combined to yield the best location estimate. The emerging solution uses 3GPP standardized technology is conjunction with satellite (GPS and many variants including A-GPS) and indoor (Wi-Fi and Bluetooth) technologies. *Id.*

[15] See 3GPP TS 36.355, E-UTRA LTE Positioning Protocol (LPP), Release 9; 3GPP TS 36.455, E UTRA LTE Positioning Protocol A (LPPa), Release 9; 3GPP TS 25.305 V11.0.0 Stage 2 Functional Specification of User Equipment (UE) Positioning in UTRAN (Release 11); 3GPP TS 37.571-1, v12.0.0 Universal Terrestrial Radio Access (UTRA) and Evolved UTRA (E-UTRA) and Evolved Packet Core (EPC) – User Equipment (UE) Conformance Specification for UE Positioning: Part 1: Conformance Test Specification (Release 12).

Proposed M-LMS Rule Changes. Recognizing marketplace realities, in March 2006, the Commission observed that "there has been very limited development of M-LMS service under" the rules adopted in 1995, and initiated a reexamination to determine whether those rules should "afford licensed service providers greater flexibility to respond to changing market conditions," including "[s]pecifically, whether our current M-LMS rules are limiting licensees from providing services that are desired in the market and that could be profitably deployed without causing harmful interference to other users."[16] The Commission expressly acknowledged the development of GPS and other competing location technologies, noting that its own "recent actions ... have advanced the broader development of location-based services in other bands."[17] The Commission asked whether "[u]nder these circumstances ... there is any public interest benefit associated with continuing to limit M-LMS service flexibility to promote vehicle and other location-based services in the nation's transportation infrastructure."[18] Finding that "current MLMS rules place significant restrictions on M-LMS operations,"[19] the Commission proposed "rule changes that could facilitate higher-valued licensed use of the" M-LMS Bands."[20] These proposals received substantial comment and support from M-LMS licensees, including PCSP.[21]

Unavailability of Equipment. Both prior and subsequent to the *2006 M-LMS NPRM,* the Wireless Telecommunications Bureau ("Bureau") acknowledged that the "unique sharing constraints" of the M-LMS bands had rendered licensees' ability to satisfy their construction obligations impossible due to circumstances – including lack of equipment – beyond their control.[22] When it granted buildout extensions in 2008, the Bureau noted "significant restrictions on M-LMS operations" as a contributing factor in the lack of equipment.[23] The Bureau also "acknowledge[d] the regulatory uncertainty engendered by the pending M-LMS rulemaking."[24]

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[16] *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Dkt. 06-49, Notice of Proposed Rulemaking, 21 FCC Rcd 2809, ¶¶ 1, 2 (2006) ("*2006 M-LMS NPRM*").
[17] *Id*. at ¶ 20.
[18] *Id*.
[19] *Id*. at ¶ 18.
[20] *See 2006 M-LMS NPRM* at ¶¶ 19-41 and Appendix, ¶ 17.
[21] *See, e.g.,* WT Dkt. 06-49, Reply Comments of PCS Partners, L.P. (June 30, 2006); Comments of PCSP Partners, L.P. (Oct. 23, 2009).

2011 Progeny Waiver. In March 2011, Progeny informed the Commission that "M-LMS development is stalled," noting that "a lot has happened in the field of position location technology since the Commission adopted its M-LMS rules and issued licenses," including the proliferation of GPS chipsets and receivers in consumer and commercial devices as a result of the Commission's E-911 rules.[25] Reiterating the *2008 Extension Order* finding that "no M-LMS equipment is commercially available for current deployment in the United States,"[26] Progeny sought relief from key M-LMS rules to allow it to be deemed to satisfy buildout requirements using proprietary technology developed by NextNav.[27]

The Bureau granted the 2011 Progeny Waiver Request, allowing Progeny to operate a network using proprietary equipment that incorporated GPS or other position location technologies, rather than deploy a specific network-based system to transmit between base stations and user terminals, and eliminating the requirement that vehicle location services constitute an M-LMS licensee's primary operations.[28]

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[22] *See, e.g.*, *Request of Progeny LMS, LLC*, Order, 21 FCC Rcd 5928, ¶¶ 13, 16 (WTB MD 2006) (finding "the lack of available M-LMS equipment continues to make construction impossible," that "spectrum sharing in the M-LMS band ... has hindered the ability of licensees to secure equipment," and that "failure to complete construction is due to causes beyond Progeny's control").

[23] *Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, WT Dkt. 08-60, Order, 23 FCC Rcd 17250, ¶ 22 (WTB 2008), *recon. pending* ("*2008 Extension Order*").

[24] *Id.* at ¶ 23.

[25] Petition for Waiver of the Rules and Request for Expedited Treatment, Progeny LMS, LLC, at 5 (Mar. 8, 2011) ("2011 Progeny Waiver Request").

[26] *Id.*

[27] *Id.* at 3, 4.

Neither the 2011 Progeny Waiver Request nor the *2011 Progeny Waiver Order* directly addressed the rule changes proposed in the *2006 M-LMS NPRM* or the state of the commercial market for M-LMS equipment. Consequently, one M-LMS licensee asked the Bureau to clarify issues raised by the *2011 Progeny Waiver Order*, including the relationship between that Order and the *2006 M-LMS NPRM*.[29] The Bureau has never acted on that petition.

With both the *2006 M-LMS NPRM* and the status of Progeny's equipment and operations still unresolved, M-LMS licensees sought further extensions of their buildout requirements, with Progeny explaining the significant uncertainty and resulting delay experienced in the development of M-LMS and noting that "[p]rimarily because of this regulatory uncertainty," commercial M-LMS equipment remained unavailable.[30] IEEE 802 informed the Bureau that its Radio Regulatory Technical Advisory Group had determined that M-LMS technology "is no longer viable considering current market conditions," and it saw "no evidence that M-LMS services are viable technology offerings given the products currently available in the market place using low cost [GPS] alternatives for geolocation services in outdoor applications."[31]

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[28] *Request by Progeny LMS, LLC for Waiver of Certain M-LMS Rules*, WT Dkt. 11-49, Order, 26 FCC Rcd 16878, ¶¶ 13-20 (2011), recon. pending ("*2011 Progeny Waiver Order*") (waiving 47 C.F.R. §§ 90.155(e) and 90.353(g)). Section 90.155(e) provides that an M-LMS station will be considered constructed and placed in operation only if it is built "in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units" and is "part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site." In June 2013, the Commission conditionally approved commercial operations by Progeny. *Request by Progeny LMS, LLC for Waiver of Certain M-LMS Rules; Progeny LMS, LLC Demonstration of Compliance with Section 90.353(d) of the Commission's Rules*, WT Dkt. 11-49, Order, 28 FCC Rcd 8555 (2013), recon. pending ("*Progeny Conditional Operations Order*").

[29] Skybridge and Telesaurus Petition for Partial Reconsideration and Clarification, WT Dkt. 11-49 (Jan. 19, 2012).

[30] See Progeny, ULS File No. 0005273607, Attachment at 3-5 (Jun. 21, 2012). After receiving these requests, the Bureau opened WT Docket No. 12-202. Public Notice, 27 FCC Rcd 8070 (WTB 2012).

Termination of 2006 M-LMS NPRM. Eight years after conceding the limitations of the M-LMS rules, the Commission abruptly terminated the *2006 M-LMS NPRM* without notice.[32] The Commission stated that "based on the record before us, and on recent developments" – specifically citing only the 2011 Progeny Waiver Request, the *2011 Progeny Waiver Order,* and the *Progeny Conditional Operations Order*[33] – the *2006 M-LMS NPRM*'s proposals "do not merit further consideration at this time."[34] The Commission found that "the types of revisions" proposed in the *2006 M-LMS NPRM* "are not necessary to provide sufficient flexibility to M-LMS licensees to provide their location services."[35]

2014 Extension Order. With the *2006 M-LMS NPRM* having been terminated one month earlier, in 2014 M-LMS licensees renewed their requests for extension and waiver. The Bureau granted in part these requests[36] – except that with respect to Progeny, the Bureau stated it would address Progeny's requests in a separate order.[37]

PCSP Request for Waiver and Extension. Following the *2014 Extension Order*, PCSP made substantial efforts to identify a viable technology solution in its M-LMS spectrum, taking into consideration both the obligation to provide location functionality and the realities of current and anticipated markets for equipment and services (including the unavailability of Progeny's proprietary technology). PCSP identified a clear path forward for utilization of its spectrum, considering the mature market for position location technology and the public interest, and requested a waiver to allow it to implement its proposal.[38]

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[31] Comments of IEEE 802, WT Dkt. 12-202, at 2 (Aug. 7, 2012).
[32] *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Dkt. 06-49, Order, 29 FCC Rcd 6361 (2014).
[33] *Id.* at ¶ 6.
[34] *Id.* at ¶ 7.
[35] *See id.*
[36] *Requests by FCR, Inc., et al. for Waiver and Limited Extension of Time*, WT Dkts. 12-202, 12-229, Order, 29 FCC Rcd 10361 (WTB 2014).
[37] *Id.* at ¶ 1.

Subsequent Progeny Waivers. Since the *2011 Progeny Waiver Order,* Progeny has been granted numerous additional waivers of its buildout obligations,[39] and has filed other requests for waivers that are pending.[40]

II. PCSP SUPPORTS RULE CHANGES TO MAKE THE M-LMS BANDS COMMERCIALLY VIABLE

The record highlights the near-total non-usage of the M-LMS Bands by M-LMS licensees, confirming that changes to the Commission's rules governing this spectrum are long overdue. Although NextNav states that the Commission's expectations in 1995 regarding how the bands would develop "contributed to the Commission's decisions to implement restrictions that are now inhibiting development and innovation in the band,"[41] in fact the M-LMS rules have been restrictive since they were adopted, during which time "innovation in the Commission's spectrum use policies made other bands more attractive" for the expected services.[42] As a result, the M-LMS Bands "remain[] largely underused in many parts of the country."[43] PCSP agrees with NextNav that "the Commission … should now recognize that restrictive service and technical rules only hinder the highest and best use of" the M-LMS Bands.[44]

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[38] PCS Partners, L.P. Petition for Waiver of 47 C.F.R. § 90.353(b) and Request for Extension of Time, WT Dkt. 16-149 (Apr. 15, 2016), amended August 19, 2016 ("PCSP Waiver Request").

[39] *See, e.g., Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, WT Dkt. 12-202, Order, 32 FCC Rcd 708 (WTB MD 2017); *Request of Progeny LMS, LLC for Waiver and Extension of Time*, WT Dkt. 12-202, Order, 35 FCC Rcd 7136 (WTB MD 2020); *Request for Waiver and Extension of Time, Further Request for Waiver and Extension of Time, Further Waiver Request, and Request for Waiver and Extension of Time*, WT Dkt. 12-202, Order, 38 FCC Rcd 2342 (WTB MD 2023).

[40] Progeny LMS, LLC Request for Waiver and Extension of Time, WT Dkt. 12-202 (filed Mar. 31, 2023).

[41] Petition at 19.

[42] *Id*. at 20.

[43] *Id*.

To address these longstanding impediments to commercial viability, NextNav proposes a "NextGen PNT Solution" that is uniquely designed to benefit NextNav and, pursuant to the Commission's secondary markets policies, NextNav's network partners. Under its proposal, the Commission would establish a new Part 90, Subpart AA of the rules, creating the "Terrestrial Positioning, Navigation, and Timing Service" ("TPNT");[45] reconfigure the 26 MHz "Lower 900 MHz Band" (902-928 MHz) to create a 5-megahertz uplink at 902-907 MHz paired with a 10-megahertz downlink at 918-928 MHz (with point-to-point transmissions permitted in both segments), and shifting non-M-LMS licensees to the 907-918 MHz portion of the band;[46] eliminate the prohibition on holding both A Block and B Block or C Block M-LMS licenses in the same geographic area;[47] exchange M-LMS licenses currently held by Progeny for a single, nationwide 15-megahertz TPNT license covering not only the EAs represented by the Progeny licenses but also the EAs of "terminated licenses" (including PCSP's) in the remainder of the U.S. (48 contiguous states, Alaska, and Hawaii);[48] and allow mobile and fixed broadband services in both the 902-907 and 918-928 MHz segments, pursuant to the Commission's Part 27 "flexible use" and power level rules.[49]

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[44] *Id*. at 21.
[45] Rules Supplement at A-9.
[46] Petition at 28; Rules Supplement at A-5, A-9 (proposed 47 C.F.R. § 90.1404). The Rules Supplement (at A-1) states that point-to-multipoint operations also would be permitted, but it is unclear whether this is proposed for one or both of the uplink and downlink segments.
[47] Rules Supplement at A-4.
[48] Petition at 29-30; Rules Supplement at A-9 (proposed 47 C.F.R. § 90.1402 (definition of "TPNT Licensee").
[49] Petition at 21-22; Rules Supplement at A-2 (proposed amendment to 47 C.F.R. § 2.106), A-9 (proposed 47 C.F.R. § 90.1403)

The impetus for the NextNav Petition appears to be Federal government efforts to promote the development of positioning, navigation, and timing ("PNT") technologies that can serve as a complement to GPS. The vulnerabilities of GPS are well-established, and long-term efforts to promote complementary backup PNT technologies, such as those described in the Petition,[50] are well-documented. Consistent with these ongoing efforts, earlier this year the U.S. Department of Transportation awarded funding to nine vendors, including NextNav, for testing and evaluation of complementary PNT ("CPNT") technologies at field test ranges in conjunction with critical infrastructure owners and operators, with the goal of facilitating adoption of CPNT technologies to improve PNT resiliency.[51] The nine vendors include four types of CPNT technologies: low-earth orbit (LEO) satellites; Time Over Fiber; terrestrial RF; and Map Matching/Map Tracking. NextNav is one of two vendors developing a terrestrial RF CPNT technology, the other being Locata Corporation, whose technology operates in the unlicensed 2.4 GHz band.[52]

The national need for and benefits of alternatives to GPS are clear, and PCSP strongly supports efforts to implement viable CPNT. Licensed M-LMS spectrum may offer a viable and much-needed terrestrial alternative to GPS. The Public Notice poses numerous questions regarding NextNav's proposed TerraPoiNT, and terrestrial PNT generally, many of which can best be addressed by NextNav. Responses to questions raised in the Public Notice should assist the Commission and stakeholders in assessing the viability of the 902-928 MHz band for the proposed uses.[53]

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[50] Petition at 3-15.

[51] See Department of Transportation Awards $7 million for Complementary Positioning, Navigation and Timing Technologies | US Department of Transportation (July 3, 2024).

[52] *See id*.

[53] See Public Notice at 3.

PCSP generally supports certain aspects of the Petition, including reinstatement of terminated licenses, flexible use of M-LMS Bands spectrum, elimination of the M-LMS license cross-ownership prohibition, and application of the Commission's secondary market policies. However, before adopting a Notice of Proposed Rulemaking proposing specific changes to the M-LMS Bands rules, the Commission first must act on relevant pending matters summarized below.

III. THE COMMISSION SHOULD NOT ADOPT A NOTICE OF PROPOSED RULEMAKING UNTIL FIRST RESOLVING LONG-PENDING M-LMS PROCEEDINGS

When NextNav filed the Petition, Progeny also filed an application requesting rule waivers and consent to assign 257 A Block and C Block M-LMS licenses from Susan L. Uecker, Receiver for Telesaurus GB Holdings, LLC and Skybridge Spectrum Foundation (the "Receiver") to Progeny (the "Assignment and Waiver Application").[54] These requests encompass 128 A Block M-LMS licenses and one C Block M-LMS license that the Bureau held automatically terminated for failure to satisfy buildout obligations. The Assignment and Waiver Application seeks reinstatement of those terminated licenses.

PCSP agrees with NextNav and Progeny that M-LMS licenses that terminated automatically for failure to construct should be reinstated. However, these issues should not be addressed in the context of the Petition and Assignment and Waiver Application.[55] Disparate treatment favoring NextNav/Progeny would directly harm PCSP, whose requests for comparable relief have been pending since 2016. The Commission therefore should first comprehensively address these long-pending proceedings and promptly reinstate PCSP's M-LMS licenses. In contrast, denial of, or continued failure to act on, PCSP's pending Petition for Reconsideration and Application for Review, coupled with grant of the Assignment and Waiver Application, would constitute unlawful disparate treatment and a substantial windfall to NextNav/Progeny that would not serve the public interest, convenience and necessity.[56] If the Commission adopts the rule changes sought in the Petition, including a single nationwide TPNT license granted to NextNav/Progeny, PCSP would be unable to benefit from those changes (even though PCSP itself has sought rule changes in an effort to make the M-LMS band commercially viable) and competition within the band would be eliminated. At the same time, only the Progeny, Skybridge, and Telesaurus terminated licenses would be reinstated for the purpose of benefiting from these changes, with Skybridge and Telesaurus reaping the profits of sale of their terminated licenses.

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[54] See Public Notice, Report No. 18454 (Apr. 24, 2024). Telesaurus and Skybridge are subject to a court-ordered receivership controlled by the Receiver. See Assignment and Waiver Application, Description of the Transaction, Public Interest Statement, and Waiver Request (hereinafter "P.I. Statement and Waiver Request"), at 1. Although the Assignment and Waiver Application identifies Progeny as the proposed assignee, the Petition indicates that NextNav will hold the licenses that are the subject of the Application. See Petition at 29.

[55] PCSP has asked the Commission to hold in abeyance, or deny in part, the Assignment and Waiver Application until the Commission fairly and comprehensively resolves these related proceedings, in order to avoid disparate treatment of similarly situated parties and prevent unnecessary expenditure of resources by the Commission and interested parties. Itron, Inc. likewise asked the Commission to hold the Application in abeyance, "pending resolution of issues raised by" the Petition, noting the "direct,

The Public Notice seeks comment on the "windfall" that NextNav might receive as a result of the proposed "spectrum swap,"[57] noting that NextNav proposes to "exchange *its*" M-LMS licenses for a single, nationwide license.[58] However, in stating that Progeny is "one of two M-LMS licensees" and that Progeny has a pending application seeking both to acquire additional licenses and to reinstate terminated licenses,[59] the Public Notice fails to explain the full extent of

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substantive connection between" the Petition and Assignment and Waiver Application. Itron, Inc. Petition to Hold in Abeyance, at 1-2, ULS File No. 0011022019 (filed May 7, 2024).

[56] *See Melody Music, Inc. v. FCC,* 340 F.2d 730 (D.C. Cir. 1965); *McElroy Elecs. Corp. v. FCC,* 990 F.2d 1351, 1365 (D.C. Cir. 1993); *Chadmoore Communications, Inc. v. FCC,* 113 F.3d 235, 242 (D.C. Cir. 1997).

[57] Public Notice at 6.

[58] *Id*. (emphasis added).

[59] *Id*. at 2, 5.

the windfall NextNav would receive in the exchange. A nationwide license including M-LMS Bands spectrum could be granted to NextNav *only* if pending proceedings are resolved adversely to PCSP. The Commission should avoid this unlawful disparate treatment by reinstating PCSP's terminated licenses. Doing so will not substantially alter the relief NextNav seeks.

Taken together, the Petition and Assignment and Waiver Application effectively ask the Commission to: (1) grant Progeny's pending request for reconsideration[60] of the decision to deny its license renewal application,[61] thereby waiving construction deadlines for and reinstating Progeny's A Block M-LMS licenses; (2) reverse the Mobility Division's decision denying extensions of construction deadlines for Skybridge and Telesaurus' terminated licenses and its holding that those licenses will not be reinstated for the purpose of permitting the Receiver to assign them to Progeny,[62] (3) *not* reinstate PCSP's terminated M-LMS licenses or act on PCSP's waiver request,[63] notwithstanding PCSP's own long-pending requests for reinstatement and for rule changes to make the M-LMS band commercially viable,[64] (4) waive the prohibition on the same entity owning both A Block and C Block M-LMS licenses in the same market,[65] (5) change the M-LMS rules to make M-LMS spectrum commercially viable,[66] and (6) give the spectrum associated with PCSP's terminated licenses, the spectrum associated with the Skybridge, Telesaurus, and Progeny terminated licenses, and all other M-LMS spectrum, solely to NextNav so that it can exclusively reap the financial benefits of a competition-free, nationwide license which it plans to monetize by making the spectrum available to one or more incumbent nationwide mobile providers, who also will lease NextNav's proprietary technology.[67]

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[60] Petition for Reconsideration of Progeny LMS, LLC, WT Dkt. 12-202 (filed Feb. 16, 2017).

[61] *In the Matter of Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, Order, 32 FCC Rcd 122 (WTB MD 2017).

[62] *Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, and Telesaurus Holdings GB, LLC*, Report and Order, 32 FCC Rcd 9458, ¶ 31 & n.134 (WTB MD 2017).

[63] Based on the history of underutilization of the M-LMS Bands, in 2016 PCSP proposed a path that offered the fastest route to deployment in A Block M-LMS spectrum. PCSP requested a waiver of 47 C.F.R. § 90.353(b) and an extension of construction deadlines to permit PCSP to deploy a Long-Term Evolution system capable of supporting both a trilateration-based M-LMS and machine-type communications for narrowband IoT applications and services. Petition for Waiver of 47 C.F.R. § 90.353(b) and Request for Extension of Time and for Expedited Treatment of PCS Partners, L.P., WT Dkt. 16-149 (filed Apr. 15, 2016, amended Apr. 19, 2016).

[64] PCSP filed an Application for Review (WT Dkt. 12-202, filed Feb. 2, 2017) asking the Commission to review Division Orders (*In the Matter of Requests by FCR, Inc. et al. for Waiver and Limited Extension of Time*, Order, 29 FCC Rcd 10361 (WTB MD 2014); *In the Matter of PCS Partners, L.P. et al., Applications for Waiver and Limited Extension of Time*, Order on Reconsideration, 32 FCC Rcd 556 (WTB MD 2017)) that, in denying extension or waiver of construction deadlines, conflict with Commission rules, policies, and precedent, were based on erroneous findings on material questions of fact, and violated PCSP's due process rights.

The interrelationships among these proceedings are obvious and Progeny/NextNav and the Receiver have acknowledged them.[68] In fact, the terms of the agreement among Progeny/NextNav and the Receiver expressly tie the Assignment and Waiver Application to both the reinstatement of terminated licenses and success of the Petition.[69] And, the public interest claims asserted for the broad relief sought in the Petition and Assignment and Waiver Application hinge on changes to "the rules governing the spectrum at issue in this application."[70]

The relief requested in the Petition and Assignment and Waiver Application thus would effectively predetermine the outcome of numerous long-pending proceedings and unlawfully prioritize resolution of pending proceedings involving Progeny and the Receiver over similarly situated parties, including PCSP. However, neither the Assignment and Waiver Application nor the Petition provide any justification for such preferential treatment. Prompt action on all relevant pending matters ultimately will serve the public interest by bringing greater clarity to the future of the M-LMS Bands spectrum, including questions raised in the Public Notice.

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[65] ULS File No. 0011022019, P.I. Statement and Waiver Request at 3.

[66] See Petition at 17-21.

[67] See Petition at 29-30. *See also* NextNav's CEO explains her 5G network buildout plan (lightreading.com) (May 3, 2024).

[68] *See, e.g.*, ULS File No. 0011022019, P.I. Statement and Waiver Request at 1-2 & 3-4 (explaining the nexus between the Application and the Petition); Petition at iv, 32-34 (requesting nationwide license on M-LMS Bands spectrum).

[69] See NextNav Inc., SEC 8-K Report, at 1 (March 7, 2024), *found at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0001865631/000121390024021237/ea0201463-8k_nextnav.htm.

[70] ULS File No. 0011022019, P.I. Statement and Waiver Request at 3.

Respectfully submitted,

PCS PARTNERS, L.P.

_*/s E. Ashton Johnston*________
E. Ashton Johnston
Mark J. O'Connor
Communications Law Counsel, PLLC
1717 K Street, N.W., Suite 900
Washington, DC 20006
Tel: (202) 552-5121
johnston@comm-law.com
oconnor@comm-law.com

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Counsel to PCS Partners, L.P.